



## Senate

General Assembly

**File No. 654**

February Session, 2016

Substitute Senate Bill No. 5

*Senate, April 18, 2016*

The Committee on Finance, Revenue and Bonding reported through SEN. FONFARA of the 1st Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

***AN ACT ESTABLISHING A SURCHARGE ON THE MANUFACTURE AND DISTRIBUTION OF OPIOIDS AND FUNDING FOR OPIOID ABUSE PREVENTION AND TREATMENT.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1       Section 1. (NEW) (*Effective January 1, 2017*) (a) For the purposes of  
2       this section and section 2 of this act:

3       (1) "Commissioner" means the Commissioner of Revenue Services;

4       (2) "Controlled substance" means a controlled substance, as defined  
5       in section 21a-240 of the general statutes, in schedule II, or III, IV or V  
6       that is also an opioid;

7       (3) "Manufacturer" means a manufacturer of a controlled substance  
8       to be sold in this state, and includes, but is not limited to, a  
9       manufacturer of a controlled substance that is licensed in accordance  
10      with section 21a-246 of the general statutes;

11       (4) "Opioid" shall include opium, opiate, opium derivatives and  
12 opium poppy;

13       (5) "Pharmacist" means a person authorized by law to practice  
14 pharmacy pursuant to section 20-590, 20-591, 20-592 or 20-593 of the  
15 general statutes;

16       (6) "Pharmacy" means an establishment licensed pursuant to section  
17 20-594 of the general statutes; and

18       (7) "Wholesaler" means a wholesaler, as defined in section 21a-240  
19 of the general statutes, of a controlled substance to be sold in this state,  
20 and includes, but is not limited to, a wholesaler of a controlled  
21 substance that is licensed in accordance with section 21a-246 of the  
22 general statutes.

23       (b) There shall be paid to the Commissioner of Revenue Services by  
24 each manufacturer or wholesaler of a controlled substance a surcharge  
25 at a rate of six and thirty-five-hundredths per cent on its gross receipts  
26 for any controlled substance lawfully sold on or after January 1, 2017,  
27 to any of the following named persons located in this state: (1) A  
28 pharmacist or pharmacy; (2) a physician, dentist or veterinarian; (3) a  
29 person in charge of a hospital, incorporated college or scientific  
30 institution; (4) a person in charge of a laboratory; or (5) a registrant, as  
31 defined in subdivision (47) of section 21a-240 of the general statutes,  
32 who is permitted to purchase and possess such controlled substance  
33 under federal and state laws and regulations. Such manufacturer or  
34 wholesaler may itemize and collect the amount of such surcharge on  
35 any sale to a person described in subdivisions (1) to (5), inclusive, of  
36 this subsection. Any person described in subdivisions (1) to (5),  
37 inclusive, of this subsection may claim a refund of the amount of such  
38 surcharge, in accordance with section 2 of this act, whenever such  
39 person dispenses such controlled substance within this state to a  
40 beneficiary of (A) the Medicare Part D program as a covered benefit  
41 under the Medicare Part D program, (B) any other state or federal  
42 program under which such controlled substance is a covered benefit  
43 that is exempt from taxation, (C) a state-administered health or human

44 services program, as defined in section 4-274 of the general statutes, or  
45 (D) a municipal plan that provides health benefits to employees or  
46 retirees or benefits for workers' compensation claims.

47 (c) Each manufacturer or wholesaler of controlled substances that  
48 lawfully sells such controlled substances to any of the persons  
49 described in subsection (b) of this section shall register with the  
50 Commissioner of Revenue Services not later than January 1, 2017, on  
51 forms prescribed by the commissioner and each registered  
52 manufacturer or wholesaler shall renew its registration with the  
53 commissioner annually, in such manner as the commissioner may  
54 prescribe. No manufacturer or wholesaler may engage in or transact  
55 business as a manufacturer or wholesaler of controlled substances to  
56 be sold in this state unless such manufacturer or wholesaler is  
57 registered with the commissioner in accordance with the provisions of  
58 this section. Any manufacturer or wholesaler that fails to register or  
59 renew such registration in accordance with the provisions of this  
60 subsection shall pay a penalty of one thousand dollars for each such  
61 failure, which penalty shall not be subject to waiver.

62 (d) Each manufacturer and wholesaler shall submit a return  
63 quarterly to the Commissioner of Revenue Services, applicable with  
64 respect to the calendar quarter beginning January 1, 2017, and each  
65 calendar quarter thereafter, on or before the last day of the month  
66 immediately following the end of each such calendar quarter, on a  
67 form prescribed by the commissioner, together with payment of the  
68 quarterly surcharge determined and payable in accordance with the  
69 provisions of this section. Whenever such surcharge is not paid when  
70 due, a penalty of ten per cent of the amount due or fifty dollars,  
71 whichever is greater, shall be imposed, and such surcharge shall bear  
72 interest at the rate of one per cent per month or fraction thereof until  
73 the same is paid. The Commissioner of Revenue Services shall cause  
74 copies of a form prescribed for submitting returns as required under  
75 this section to be distributed to persons subject to the surcharge.  
76 Failure to receive such form shall not be construed to relieve any  
77 manufacturer or wholesaler subject to the surcharge under this section

78 from the obligations of submitting a return, together with payment of  
79 such surcharge within the time required. The provisions of sections 12-  
80 548 to 12-554, inclusive, of the general statutes and sections 12-555a  
81 and 12-555b of the general statutes shall apply to the provisions of this  
82 section in the same manner and with the same force and effect as if the  
83 language of said sections 12-548 to 12-554, inclusive, and sections 12-  
84 555a and 12-555b had been incorporated in full into this section and  
85 had expressly referred to the surcharge imposed under this section,  
86 except to the extent that any such provision is inconsistent with a  
87 provision of this section. Any moneys received by the commissioner  
88 pursuant to this section shall be deposited into the opioid abuse  
89 prevention and treatment account established in section 3 of this act.

90 (e) The Commissioner of Revenue Services shall notify the  
91 Commissioner of Consumer Protection whenever a manufacturer or  
92 wholesaler licensed pursuant to section 21a-246 of the general statutes  
93 has continuously failed to comply with the requirements of this section  
94 for a period of at least six months. The Commissioner of Consumer  
95 Protection may suspend, revoke or refuse to renew the license of a  
96 manufacturer or wholesaler who has continuously failed to comply  
97 with the requirements of this section for a period of six months or  
98 longer. The Commissioner of Revenue Services shall notify the  
99 licensing authority of any other state where a manufacturer or  
100 wholesaler is licensed whenever such manufacturer or wholesaler has  
101 continuously failed to comply with the requirements of this section for  
102 a period of at least six months.

103 (f) Nothing in this section shall exempt any person from the tax  
104 imposed pursuant to chapter 228d of the general statutes with respect  
105 to marijuana or other controlled substance, as those terms are defined  
106 in section 12-650 of the general statutes.

107 Sec. 2. (NEW) (*Effective January 1, 2017*) (a) Any person claiming a  
108 refund pursuant to subsection (b) of section 1 of this act shall file such  
109 claim in accordance with this section. Each claim for a refund shall be  
110 on a form prescribed by the Commissioner of Revenue Services and

111 shall be accompanied by invoices or sales receipts or other statements  
112 of fact, under penalty of false statement, showing, to the satisfaction of  
113 the commissioner, the amount paid with respect to such refund, and  
114 any other information that is deemed necessary by the commissioner  
115 for the determination of such claim. Any claim for a refund with  
116 respect to a controlled substance sold by such person during any  
117 calendar year shall be filed with the commissioner on or before May  
118 thirty-first of the succeeding year.

119 (b) (1) The commissioner shall, not later than ninety days after  
120 receipt of any claim under this section, transmit all claims approved by  
121 the commissioner to the Comptroller, who shall draw an order upon  
122 the State Treasurer for payment. If the commissioner determines that  
123 any such claim is not valid, either in whole or in part, the  
124 commissioner shall mail notice of the proposed disallowance to the  
125 claimant and such notice shall set forth briefly the commissioner's  
126 findings of fact and the basis of disallowance in each case decided in  
127 whole or in part adversely to the claimant. Sixty days after the date on  
128 which it is mailed, a notice of proposed disallowance shall constitute a  
129 final disallowance except only for such amounts as to which the  
130 claimant has filed, as provided in subdivision (2) of this subsection, a  
131 written protest with the commissioner.

132 (2) On or before the sixtieth day after the mailing of the proposed  
133 disallowance, the claimant may file with the commissioner a written  
134 protest against the proposed disallowance in which the claimant sets  
135 forth the grounds on which the protest is based. If a protest is filed, the  
136 commissioner shall reconsider the proposed disallowance and, if the  
137 claimant has so requested, may grant or deny the claimant or the  
138 claimant's authorized representatives an oral hearing.

139 (3) The commissioner shall mail notice of the commissioner's  
140 determination to the claimant, which notice shall set forth briefly the  
141 commissioner's findings of fact and the basis of decision in each case  
142 decided in whole or in part adversely to the claimant.

143 (4) The action of the commissioner on the claimant's protest shall be

144 final upon the expiration of one month from the date on which the  
145 commissioner mails notice of the commissioner's action to the claimant  
146 unless within such period the claimant seeks judicial review of the  
147 commissioner's determination in the manner provided for distributors  
148 pursuant to section 12-463 of the general statutes.

149 Sec. 3. (NEW) (*Effective January 1, 2017*) There is established an  
150 opioid abuse prevention and treatment account which shall be a  
151 separate, nonlapsing account within the General Fund. The account  
152 shall contain the amount of any surcharges collected pursuant to  
153 section 1 of this act and any other moneys required by law to be  
154 deposited in the account. Amounts in the account shall be expended  
155 only for the purpose of providing funds to the Department of Mental  
156 Health and Addiction Services to provide grants-in-aid for regional  
157 opioid abuse prevention and treatment programs pursuant to section 5  
158 of this act.

159 Sec. 4. Subsection (d) of section 17a-450 of the general statutes is  
160 repealed and the following is substituted in lieu thereof (*Effective*  
161 *January 1, 2017*):

162 (d) The Department of Mental Health and Addiction Services is  
163 designated as the lead state agency for substance abuse prevention and  
164 treatment in this state, and as such is designated as the state  
165 methadone authority. As the designated state methadone authority,  
166 the department is authorized by the federal Center for Substance  
167 Abuse Treatment of the Substance Abuse and Mental Health Services  
168 Administration within the United States Department of Health and  
169 Human Services to exercise responsibility and authority for the  
170 treatment of opiate addiction with an opioid medication, and  
171 specifically for: (1) Approval of exceptions to federal opioid treatment  
172 protocols in accordance with the Center for Substance Abuse  
173 Treatment, (2) monitoring all opioid treatment programs in the state,  
174 (3) providing grants-in-aid to regional opioid abuse prevention and  
175 treatment programs that follow state and federal treatment protocols  
176 in accordance with section 5 of this act, and [(3)] (4) approval of Center

177 for Substance Abuse Treatment certification of all opioid treatment  
 178 programs in the state. The Commissioner of Mental Health and  
 179 Addiction Services may adopt regulations in accordance with chapter  
 180 54 to carry out the provisions of this subsection.

181       Sec. 5. (NEW) (*Effective January 1, 2017*) (a) The Commissioner of  
 182 Mental Health and Addiction Services shall provide grants-in-aid,  
 183 within available resources, to one or more regional opioid abuse  
 184 prevention and treatment programs in each mental health region  
 185 established pursuant to section 17a-478 of the general statutes. The  
 186 commissioner shall provide such grants-in-aid to programs that follow  
 187 state and federal treatment protocols and shall allocate such grants-in-  
 188 aid on the basis of regional need and demand for services. Each  
 189 program that receives a grant-in-aid pursuant to this section shall  
 190 provide services in a manner that reduces the stigma associated with  
 191 opioid abuse prevention and treatment and minimizes client contact  
 192 with the criminal justice system.

193       (b) Not later than January 31, 2018, the commissioner shall submit a  
 194 report to the joint standing committees of the General Assembly  
 195 having cognizance of matters relating to public health and finance,  
 196 revenue and bonding concerning the grants-in-aid awarded during the  
 197 calendar year commencing January 1, 2017. The report shall indicate  
 198 the amount of the grants-in-aid awarded, the recipients of the grants-  
 199 in-aid, any amounts remaining in the opioid abuse prevention and  
 200 treatment account established pursuant to section 3 of this act that  
 201 were not allocated as of December 31, 2017, and the commissioner's  
 202 recommendations, if any, for amendments to the general statutes  
 203 regarding the grants-in-aid program or regional opioid abuse  
 204 prevention and treatment programs.

|   |                        |             |
|---|------------------------|-------------|
| This act shall take effect as follows and shall amend the following sections: |                        |             |
| Section 1   | <i>January 1, 2017</i> | New section |
| Sec. 2  | <i>January 1, 2017</i> | New section |
| Sec. 3  | <i>January 1, 2017</i> | New section |

|        |                        |             |
|--------|------------------------|-------------|
| Sec. 4 | <i>January 1, 2017</i> | 17a-450(d)  |
| Sec. 5 | <i>January 1, 2017</i> | New section |

**FIN**      *Joint Favorable Subst.*



The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

### ***OFA Fiscal Note***

#### ***State Impact:***

| <b>Agency Affected</b>                           | <b>Fund-Effect</b>  | <b>FY 17 \$</b> | <b>FY 18 \$</b> |
|--|---|-----------------|-----------------|
| Mental Health & Addiction Serv., Dept.           | Opioid Abuse Prevention and Treatment Account (non-appropriated) - Revenue Gain | 1.75 million    | 3.5 million     |
| Department of Revenue Services                   | GF - Cost   | 115,500         | 64,000          |
| Consumer Protection, Dept.                       | GF - Cost   | 91,457          | 177,914         |
| State Comptroller - Fringe Benefits <sup>1</sup> | GF - Cost   | 54,701          | 96,620          |

Note: GF=General Fund

***Municipal Impact:*** None

#### ***Explanation***

The bill results in the following impacts.

#### ***Opioid Gross Receipts Surcharge***

The bill results in a revenue gain of \$1.75 million in FY 17 and \$3.5 million in FY 18 and annually thereafter by imposing a surcharge of 6.35% on the gross receipts of certain legal sales of schedule II through V controlled substances that are also opioids.

The bill is not anticipated to result in a cost to the state or municipalities, for health plans (including the state Medicaid program) or workers' compensation programs which provide pharmacy benefits.

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<sup>1</sup>The fringe benefit costs for most state employees are budgeted centrally in accounts administered by the Comptroller. The estimated active employee fringe benefit cost associated with most personnel changes is 39.94% of payroll in FY 17 and FY 18.

The bill's provisions appear to prevent pharmacists and other practitioners outlined in the bill from passing along the surcharge to individuals/carriers receiving/providing pharmacy benefits under a state or municipal program specified in the bill. To the extent the provisions of the bill impact the price of opioids available to state programs there may be a fiscal impact.

### *"Opioid Abuse Prevention and Treatment" Account*

The bill creates the "opioid abuse prevention and treatment" non-appropriated account into which the opioid 6.35% surcharge revenue will be deposited. The bill requires the Department of Mental Health and Addiction Services (DMHAS) to provide grants-in-aid to regional opioid programs using funds in the account. There is no cost to DMHAS to administer the grants-in-aid under the program.

### *Administration Costs*

**Sections 1 and 2** result in a cost to the Department of Revenue Services (DRS) of \$134,671 in FY 17 and \$89,562 annually thereafter. This consists of a one-time cost of \$67,500 in FY 17 to establish the new surcharge, including updates to the online Taxpayer Service Center and changes to DRS' internal Integrated Tax Administration System for data capture and scanning, and postage costs. There are also on-going salary and fringe costs, which annualize to \$64,000 (salary) and \$25,562 (fringe) in FY 18, associated with one Revenue Examiner 1 for audit/compliance and to administer the refund provisions of the bill.

Section 1(e) of the bill results in a cost to the Department of Consumer Protection (DCP) of \$91,457 in FY 17 and \$177,914 in FY 18. The DCP would require a Paralegal and a Staff Attorney to schedule and conduct noncompliance administrative hearings. There are approximately 2,000 registered wholesalers and manufacturers of controlled substances registered with the DCP. Half of the registrants are located out-of-state. Assuming ten percent of the registrants are noncompliant during the year, this would result in approximately 200 administrative hearings.

***The Out Years***

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

Sources: Meier, Barry and Bill Marsh, "Soaring Cost of Opioid Economy," NY Times, June 22, 2013  
Congressional Budget Office, "Prescription Drug Pricing in the Private Sector," January 2007  
Kaiser Family Foundation

**OLR Bill Analysis****sSB 5*****AN ACT ESTABLISHING A SURCHARGE ON THE MANUFACTURE AND DISTRIBUTION OF OPIOIDS AND FUNDING FOR OPIOID ABUSE PREVENTION AND TREATMENT.*****SUMMARY:**

This bill creates a mechanism to fund opioid abuse and prevention programs in the state's five mental health regions. The mechanism has two components. One component imposes a 6.35% surcharge on the gross receipts of the legal sale of selected controlled substances, specifically (1) any schedule II controlled substance and (2) schedules III, IV, or V controlled substances that are also opioids (see BACKGROUND). The other component deposits the revenue the surcharge generates in a special account for funding opioid abuse and prevention programs.

The surcharge does not exempt anyone from paying the tax imposed on controlled substances and marijuana that are illegally acquired, transported, or imported into Connecticut (CGS § 12-651).

Under the bill, Department of Consumer Protection (DCP)-licensed manufacturers and wholesalers of the selected controlled substances must:

1. register with the Department of Revenue Services (DRS) commissioner by January 1, 2017;
2. collect the surcharge from pharmacists, physicians, and others authorized to distribute, administer, or dispense the covered substances (practitioners); and
3. remit the revenue to DRS as the bill requires.

Manufacturers and wholesalers that fail to comply with these requirements face penalties and interest charges.

Practitioners may claim a refund for surcharges they paid on the selected controlled substances they acquired from a manufacturer or wholesaler and subsequently dispensed to a beneficiary of:

1. the Medicare Part D program,
2. any program under which such substances are a covered benefit exempt from taxation,
3. a state-administered health or human services program, or
4. a municipal plan that provides health benefits to employees or retirees or benefits for workers' compensation claims.

The revenue the surcharge generates must go into a separate, nonlapsing fund the bill establishes to fund regional opioid abuse and prevention programs. The Department of Mental Health and Addiction Services (DMHAS) must administer the funds, awarding grants to programs that meet the bill's criteria. The DMHAS commissioner must report to the legislature by January 31, 2018 on the grants she awarded in 2017.

EFFECTIVE DATE: January 1, 2017

## **TAX ON SELECTED CONTROLLED SUBSTANCES**

The bill imposes a 6.35% surcharge on the legal sale of the selected controlled substances on or after January 1, 2017. The surcharge must be collected and remitted by DCP-licensed manufacturers and wholesalers from the following practitioners: pharmacists and pharmacies; physicians, dentists, and veterinarians; people in charge of hospitals, incorporated colleges, scientific institutions, and laboratories; and others allowed to purchase and possess controlled substances (i.e., registrants).

### ***Registration***

Under the bill, DCP-licensed manufacturers and wholesalers of selected controlled substances must annually register with the DRS commissioner beginning January 1, 2017, which is also the bill's effective date. Those that fail to do so cannot manufacture or sell the selected controlled substances at wholesale. If they fail to register or renew their registration, they face a \$1,000 fine, which the commissioner cannot waive, for each such failure. As explained below, manufacturers and wholesalers may lose their licenses if they fail to register or renew their registration for at least six months.

### ***Collecting and Remitting the Tax***

Manufacturers and wholesalers must collect the surcharge the bill imposes and remit it to DRS on a quarterly basis, beginning January 1, 2017. They may itemize and collect the tax from each practitioner, and they must remit the surcharge collected during each calendar quarter by the last day of the month following the quarter (e.g., surcharge collected during January through March must be remitted by April 30). Manufacturers and wholesalers that fail to do so must pay 10% of the surcharge due or \$50, whichever is more, plus 1% interest per month or partial month until they remit the surcharge.

The DRS commissioner must distribute forms manufacturers and wholesalers must use to remit the surcharge, but failure to receive the forms does not relieve them of the duty to remit the tax. The commissioner must enforce the collection and remittance of the surcharge using the same powers and tools the law grants him to enforce the collection and remittance of the admissions tax (CGS §§ 12-548 – 12-554, 12-555a, & 12-555b).

The DRS commissioner must also notify the DCP commissioner when a manufacturer or wholesaler continuously fails to comply with the bill's requirements for at least six months. Once notified, the DCP commissioner may suspend, revoke, or refuse to renew their license. The DRS commissioner must also notify the licensing authority in any other state where these businesses are licensed to make or sell at wholesale selected controlled substances.

***Applying for Refund***

The bill allows practitioners to claim a refund for the surcharge they paid on selected controlled substances they subsequently prescribed to a beneficiary of a health plan under which such substances are exempt from taxation.

To claim such a refund, a practitioner must file the claim on the form the DRS commissioner prescribes, along with invoices, sales receipts, or statements attesting to the amount of surcharge it paid on refundable sales. The practitioner must submit these documents under the penalty of false statement and provide the commissioner any information he needs to verify the claim. The practitioner must file the claim by May 31 of the year following the one in which the business paid the taxes.

The commissioner must act on each claim within 90 days after receiving it, notifying the comptroller of those he approves. The comptroller, in turn, must direct the state treasurer to process the payment.

The commissioner must also notify the practitioner if he disapproves all or part of the claim. He must do so by mail, stating his reasons for denial. The practitioner has 60 days to respond in writing, after which the notice is considered final. If the practitioner protests the commissioner's decision, the commissioner must reconsider it and, if the practitioner requests an oral hearing, decide whether to hold one.

After reconsidering the practitioner's claim, the commissioner must provide notice of his decision. He must do so by mail, again explaining the reasons for his decision. The practitioner has 30 days to appeal his decision to Superior Court, following the same steps fuel distributors must follow for appealing his decisions regarding the motor fuel tax (CGS § 12-463). Otherwise, the commissioner's decision is final one month after the notice is received.

**OPIOID ABUSE AND PREVENTION TREATMENT GRANTS**

The bill establishes a separate, nonlapsing account within the

General Fund for depositing the revenue the surcharge generates, plus any other money that must, by law, be deposited in the account. The account's funds can be used by DMHAS only to fund regional opioid abuse and treatment programs that follow federal and state treatment protocols.

The DMHAS commissioner can make one or more grants to these programs in each of the state's five mental health regions based on each region's needs and demands for service. Programs awarded grants must use the funds to reduce the stigma associated with such programs and minimize each client's contact with the court system.

The commissioner must report to the Public Health and Finance, Revenue and Bonding committees by January 31, 2018 on the grants she awarded in calendar year 2017. The report must (1) identify the grant amounts and recipients, (2) indicate the account balance as of December 31, 2017, and (3) recommend changes to the grants and the programs they fund.

## **BACKGROUND**

### ***Controlled Substances***

Controlled substances are grouped in schedules I through V according to their decreasing tendency to promote abuse or dependency. Schedule I and II substances, which include opiates and most painkillers, are the most strictly controlled because of their high potential for abuse.

## **COMMITTEE ACTION**

Finance, Revenue and Bonding Committee

Joint Favorable Substitute

Yea 37 Nay 13 (03/31/2016)